be vicious, is not liable for injuries inflicted by the horse while in the custody of the bailee; but the authorities cited by the learned author for a general statement in the text claimed to be authority for such contention merely hold that the bailor is not liable for the consequences of the negligent management of the horse by the bailee, and other parts of the section and other authorities therein cited indicate that such is not the rule where the injuries result from the known viciousness of the animal.

"The liability of the appellant company, however, if it be liable, must be predicated upon another ground. I am of the opinion that its liability depends upon whether it is chargeable with the notice and knowledge its servant McGuire had of the vicious propensity of the horse. It is perfectly clear on the evidence that the relationship of master and servant existed between McGuire and the company, and that in driving the horse in making deliveries and in returning therefrom, and in leaving the horse in the street unattended, McGuire was acting as the servant of the company, and that it would be answerable to anyone sustaining injuries or damages by reason of McGuire's negligence. Howard *v.* Ludwig, 171 N. Y. 507, 64 N. E. 172; Baldwin *v.* Abraham, 57 App. Div. 67, 67 N. Y. Supp. 1079, affirmed 171 N. Y. 677, 64 N. E. 1118; Miller *v.* North Hudson Contracting Co., 166 App. Div. 348, 152 N. Y., Supp. 22, affirmed 222 N. Y. 551, 118 N. E. 1068; Gorney *v.* City of N. Y., 102 App. Div. 259, 92 N. Y. Supp. 451; Waters *v.* Pioneer Fuel Co., 52 Minn. 474, 55 N. W. 52, 38 Am. St. Rep. 564; Postal Tel. Co. *v.* Murrell, 180 Ky. 52, 201 S. W. 462, L. R. A. 1918D, 357; Burns *v.* Michigan Paint Co., 152 Mich. 613, 116 N. W. 182, 16 L. R. A. (N. S.) 816. McGuire was also in the company's employ and its servant when, according to the testimony on behalf of the plaintiff, he was informed of the vicious propensity of the horse manifested on former occasions. There can be no doubt, I think, but that the wagon and the horse, as well as McGuire, were in the employ of the company, and were being used in the performance of its business, and that if any one lawfully upon or near the wagon sustained injuries through its being negligently unsafe or out of repair the company would be liable. Green *v.* McMullon, Snare & Triest, Inc., 177 App. Div. 771, 164 N. Y. Supp. 948."

Arrest—Unlawful Arrest—Order from Superior as Defense.—In Grau *v.* Forge, 183 Ky. 521, 209 S. W. 369, 3 A. L. R. 642, the court said: "In support of the contention it is urged that an inferior police officer is bound to obey the orders and directions of his superior, and that in doing so he is not amenable to the person arrested, although the arrest was wrongful and without warrant of law; and this conclusion is sought to be drawn by analogy from

that principle of the law which excuses an individual from liability when called upon by an officer to assist in making an arrest, although the officer was proceeding without authority, and some cases in other states, as well as those of C., N. O. & T. P. Ry. Co. *v.* Cundiff, 166 Ky. 594, 179 S. W. 615, Ann. Cas. 1916C, 513 and Franks *v.* Smith, 142 Ky. 232, 134 S. W. 484, L. R. A. 1915A, 1141, Ann. Cas. 1912D, 319, from this court, are relied upon. We do not doubt the principle of law which, under the circumstances mentioned, excuses a private citizen from liability, however wrongful the arrest might have been; but that principle cannot be extended so as to protect an officer, although subordinate to another, who directed the arrest. The precise point was determined contrary to the contention here made in the case of Leger *v.* Warren, 62 Ohio St. 500, 57 N. E. 506, 51 L. R. A. 193, 78 Am. St. Rep. 738, and substantially so by this court in the case of Franks *v.* Smith, supra. Aside from these express determinations of the question, the two situations are by no means analogous. When a citizen is called upon to assist an officer in making an arrest, the law makes it his duty to obey and act at once, and he is justified in assuming that the officer is acting within his official duties and under authority duly conferred by the law. To permit a citizen in such cases to delay the arrest by withholding his assistance until he can satify himself of the legality of the officer's proceeding would frequently result in the escape of criminals, and would seriously retard the enforcement of the law. Not so with an officer. He is conclusively presumed to know his duty, and to refrain from acting outside of such duty. The announcement of such a principle of law as contended for would greatly imperil the liberties of the citizen, and would in almost every case render the arresting officer immune from the consequences of his unlawful arrest, since it could be easily shown that some officer other than the one making the arrest had given the defendant orders to make it."

Banks and Banking—Damages for Refusal to Pay Check.—In McFall *v.* First Nat. Bank of Forrest City, 211 S. W. 919, the Supreme Court of Arkansas held that where a bank wrongfully refuses to pay checks drawn upon it by a merchant depositor having funds subject to check, depositor may recover substantial damages from bank; such refusal imputing insolvency, dishonesty, or bad faith of drawer.

The court said: "This appeal involves a determination of the rule by which to measure damages against a bank for refusal to pay a merchant depositor's check who has sufficient funds on deposit to pay it. There is no statute in our State fixing the measure of damages of this character of case, so the common-law rule will control. The common-law rule, as stated in Siminoff *v.* Jas. H. Goodman &